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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,397

Applicant(s)

PAULEY ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 080105.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 5 – 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Zamora et al. (GB 2227666).

With reference to claim 1, Zamora et al. (hereinafter “Zamora”) discloses a tampon pledget comprising an inverted coverstock, said inverted coverstock comprising an insertion end and a removal end wherein the insertion end (34) and the removal end (32) each have one or more pleats as set forth in figure 7a.

Regarding claim 3, Zamora discloses a tampon pledget with the claimed amount of pleats as set forth in figure 7a.

As to claim 5, Zamora discloses a tampon pledge further comprising a plurality of non absorbent materials and a plurality of absorbent materials as set forth on page 4, lines 4 – 21 and on page 6, lines 15 – 32.

Regarding claim 6, Zamora discloses a tampon pledget wherein the plurality of non absorbent materials and a plurality of absorbent materials are blended together as set forth on page 4, lines 11 – 14.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Sneider (US 4,351,339).

With reference to claims 1 and 3, Sneider discloses a tampon pledget comprising an inverted coverstock, said inverted coverstock comprising an insertion end and a removal end wherein the insertion end and the removal end each have one or more pleats as set forth in figure 2.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sneider (US 4,351,339).

The difference between Sneider and claim 4 is the provision that the one or more pleats is about 6 to about 10 pleats.

It would have been obvious to one of ordinary skill in the art to provide the claimed amount of pleats because Sneider teaches that the pleats in the outer cover may be a numerous as desired as set forth in col. 5, lines 35 – 38.

Claims 7 – 11 and 14 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zamora et al. (GB 2 227 666) in view of Foley et al. (US 5,817,077).

The difference between Zamora and claim 7 is the provision that the plurality of non-absorbent materials and the plurality of absorbent materials are present in a percent ratio about 25/75 to 70/30.

Foley et al. (hereinafter "Foley") teaches a tampon pledget having plurality of non absorbent materials and a plurality of absorbent materials present in a percent ratio about 25/75 to 70/30 as set forth in col. 5, lines 36 – 60.

It would have been obvious to one of ordinary skill in the art to modify the percent ratio of non absorbent materials to absorbent materials because this cover creates a discontinuity between the absorbent core and the vaginal epithelium thereby substantially reducing the capillary suction pressure of the absorbent core on the vaginal epithelium as taught by Foley in col. 5, lines 13 – 16.

Regarding claim 8, see the rejection of claim 7.

With reference to claim 9, Foley teaches a tampon pledget wherein the plurality of non absorbent materials includes a plurality of non absorbent fibers, and wherein the plurality of absorbent materials includes a plurality of absorbent fibers as set forth in col. 5, lines 16 – 30.

As to claim 10, Foley teaches the claimed denier as set forth in col. 5, lines 53 – 55.

With reference to claim 11, Foley teaches a tampon pledget wherein the plurality of absorbent fibers are rayon fibers as set forth in col. 5, lines 22 – 24.

It would have been obvious to one of ordinary skill in the art to modify the denier of the rayon fibers in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of routine skill in the art.

Regarding claims 14 – 18, Foley teaches the use of polysorbate 20 as set forth in col. 3, lines 30 – 33.

With reference to claims 19 – 20, it would have been obvious to one of ordinary skill in the art to modify the amount of surfactant present since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of routine skill in the art.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 – 46 are rejected under the judicially created doctrine of double patenting over claims 1 – 30 of U. S. Patent No. 6,595,974 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: both in the instant application and U.S. Patent No. 6,595,974 are directed to a tampon pledget comprising a plurality of non-absorbent fibers, rayon fibers and superabsorbent material with the various plurality of fibers being present in specific ratios and including an external fin seal, a side seam bond and other various components.

Response to Arguments

Applicant's arguments filed July 5, 2005 have been fully considered but they are not persuasive.

With respect to the applicant's arguments that Zamora does not have a removal end having one or more pleats, the examiner disagrees. As shown in figure 7a, the examiner considers 34 as part of the insertion end and the end of 32 as part of the removal end. The pleat is formed in the insertion end 32 by way of the seal 34. Pleats are also shown at the end of the removal end 32. The fact that another step may be performed after this does not preclude figure 7a from meeting the claimed limitations.

Further, even in figure 7b, the examiner may consider the seal 34 as the at least one pleat in the removal end and the seal 35 as the at least one pleat in the insertion end.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Primary Examiner
Art Unit 3761